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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,226	11/14/2001	Raymond Anthony Joao	RJ371	6756
7590 RAYMOND A. JOAO, ESQ. 122 BELLEVUE PLACE YONKERS, NY 10703			EXAMINER NAJARIAN, LENA	
			ART UNIT 3626	PAPER NUMBER
			MAIL DATE 07/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/987,226

Applicant(s)

JOAO, RAYMOND ANTHONY

Examiner

Lena Najarian

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 22-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 22-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the Request for Continued Examination (RCE) filed 5/10/07. Claims 1-9 have been amended. Claims 10-21 are canceled. Claims 22-32 are newly added. Claims 1-9 and 22-32 are pending.

Claim Rejections - 35 USC § 112

2. The rejection of claim 9 under 35 U.S.C. 112, second paragraph, is hereby withdrawn due to the amendment filed 5/10/07.

Claim Rejections – 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-9, 22, and 24-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Ballantyne et al. (5,867,821).

(A) Referring to claim 1, Ballantyne discloses an apparatus, comprising (abstract of Ballantyne):

a processor, wherein the processor processes a request to access information contained in a patient's healthcare record, wherein the processor determines whether an individual is authorized to access information contained in the patient's healthcare record, and further wherein the processor generates a notification report containing information regarding the request to access information contained in a patient's healthcare record, wherein the notification report contains information regarding the individual who accessed the patient's healthcare record (col. 7, line 67 – col. 8, line 60, col. 15, lines 22-39, col. 16, lines 7-13, and col. 12, lines 35-57 of Ballantyne); and

a transmitter, wherein the transmitter transmits the notification report to a patient communication device of the patient, and further wherein the notification report is transmitted to the patient communication device over a wireless communication network (col. 7, line 67 – col. 8, line 60, col. 15, lines 22-39, col. 16, lines 7-13, and col. 12, lines 35-57 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(B) Referring to claim 2, wherein the individual or entity is a third party (col. 8, lines 2-7, col. 16, lines 39-44, and col. 6, lines 47-57 of Ballantyne).

(C) Referring to claim 3, Ballantyne discloses a receiver, wherein the receiver receives the request to access information contained in the healthcare record (col. 2, lines 18-20 and col. 7, line 67 – col. 8, line 2 of Ballantyne)

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(D) Referring to claim 4, Ballantyne discloses wherein the processor processes identification information associated with the individual (col. 8, lines 28-31 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(E) Referring to claim 5, Ballantyne discloses wherein the notification report contains information regarding an attempted accessing, of the information contained in the patient's healthcare record (col. 3, lines 31-34 and col. 8, lines 2-39 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(F) Referring to claim 6, Ballantyne discloses wherein the apparatus stores information regarding the accessing of the information contained in the healthcare record (col. 8, lines 54-56 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(G) Referring to claim 7, Ballantyne discloses wherein the apparatus generates an activity report containing information regarding the accessing of the information contained in the patient's healthcare record, wherein the activity report is generated monthly (col. 8, lines 5-7 and col. 8, lines 52-60 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

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(H) Referring to claim 8, Ballantyne discloses wherein the apparatus transmits the activity report to the patient communication device (col. 8, lines 52-60 and col. 3, lines 60-67 of Ballantyne).

(I) Referring to claim 9, Ballantyne discloses an apparatus, comprising (abstract of Ballantyne):

a receiver for receiving information regarding a restriction regarding an ability of an individual to access information contained in a patient's healthcare record of a patient, wherein the information regarding a restriction is transmitted from a patient communication device (col. 2, lines 18-20, col. 8, lines 7-43, and col. 7, line 67 – col. 8, line 2 of Ballantyne);

a memory device for storing the information regarding the restriction (col. 8, lines 7-43 of Ballantyne); and

a processor for processing a request to access information contained in the patient's healthcare record, wherein the processor processes the request utilizing the information regarding the restriction, and further wherein the processor determines whether an accessing of the information contained in the healthcare record is authorized, based on the information regarding a restriction (col. 8, lines 2-60 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(J) Referring to claim 22, Ballantyne discloses wherein the individual or entity is a healthcare provider (col. 8, lines 20-28 of Ballantyne).

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(K) Referring to claim 24, Ballantyne discloses a receiver for receiving a signal or message transmitted from the patient communication device, wherein the signal or message contains information for terminating an accessing of information contained in the patient's healthcare record (col. 8, lines 60-64 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(L) Referring to claim 25, Ballantyne discloses a memory device for storing information regarding a restriction regarding an ability of the individual to access information contained in the patient's healthcare record, wherein the restriction is transmitted to the receiver from the patient communication device of the patient (col. 8, lines 7-43 of Ballantyne),

wherein the processor processes the request utilizing the information regarding the restriction and determines whether accessing of the information contained in the patient's healthcare record is authorized (col. 8, lines 2-60 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(M) Referring to claims 26-29, Ballantyne discloses wherein the patient communication device is a telephone, is a personal computer, is a personal digital assistant, and is a television (Fig. 1, col. 3, lines 60-67, and col. 9, lines 3-15 & 32-39 of Ballantyne).

(N) Referring to claim 30, Ballantyne discloses wherein the processor generates a notification report containing information regarding the request to access information contained in a patient's healthcare record wherein the notification report contains

information regarding the individual who accessed the patient's healthcare record, and further wherein the apparatus further comprises: a transmitter, wherein the transmitter transmits the notification report to the patient communication device (col. 7, line 67 – col. 8, line 60 and col. 15, lines 22-39 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

(O) Referring to claim 31, Ballantyne discloses wherein the notification report is transmitted to the patient communication device over a wireless communication network (col. 7, line 67 – col. 8, line 60, col. 15, lines 22-39, and col. 12, lines 35-57 of Ballantyne).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 23 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5,867,821) in view of Mayaud (5,845,255).

(A) Referring to claim 23, Ballantyne does not disclose wherein the individual or entity is a healthcare payer or an insurance provider.

Mayaud discloses wherein the entity is an insurance provider (col. 8, lines 52-63 of Mayaud).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include the aforementioned feature of Mayaud within Ballantyne. The motivation for doing so would have been for all institutions known to have historical records on patients to be included as users of the system (col. 8, lines 52-63 of Mayaud).

Insofar as the claim recites “or” it is immaterial whether or not the other elements are also disclosed.

(B) Referring to claim 32, Ballantyne does not disclose wherein information regarding a restriction or limitation is transmitted to the receiver on or over at least one of the Internet and the World Wide Web.

Mayaud discloses wherein information regarding a restriction or limitation is transmitted to the receiver over the Internet (col. 10, lines 12-27, col. 48, lines 1-7, and col. 17, line 60 – col. 18, line 5 of Mayaud).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include the aforementioned feature of Mayaud within Ballantyne. The motivation for doing so would have been to provide patient data security and to provide the convenience of online access (col. 17, line 60 – col. 18, line 5 of Mayaud).

Insofar as the claim recites “at least one of,” or “or,” it is immaterial whether or not the other elements are also disclosed.

Response to Arguments

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7. Applicant's arguments filed 5/10/07 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 5/10/07.

(1) Applicant states that the present invention, as defined by claims 1-9 and 22-32, is patentable over the prior art. Applicant respectfully submits that Ballantyne does not disclose or suggest many of the specifically recited features of independent claims 1 and 9.

(A) As per the first argument, the Examiner is concerned that, aside from merely alleging that certain claimed features are not anticipated from Ballantyne, essentially in the form of blanket statements, Applicant does not point to any specific distinction(s) between the features disclosed in the reference and the features that are presently claimed. In particular, 37 CFR 1.111(b) states, "A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the reference does not comply with the requirements of this section." Applicant has failed to specifically point out HOW the language of the claims patentably distinguishes them from the applied reference. Also, arguments or conclusions of Attorney cannot take the place of evidence. *In re Cole*, 51 CCPA 919, 326 F.2d 769, 140 USPQ 230 (1964); *In re Schulze*, 52 CCPA 1422, 346 F.2d 600, 145 USPQ 716 (1965); *Mertizner v. Mindick*, 549 F.2d 775, 193 USPQ 17 (CCPA 1977).

Conclusion


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches a medical record management system and process with improved workflow features (5,974,389); and a patient care delivery system (US 6,302,844 B1).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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